UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil Bankruptcy Judge Sacramento, California

June 10, 2014 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled "Amended Civil Minute Order."

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

- 2. The court will not continue any short cause evidentiary hearings scheduled below.
- 3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.
- 4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	14-22102-D-13	SAUL/ADRIANA GARCIA	CONTINUED OBJECTION TO
	RDG-1		CONFIRMATION OF PLAN BY RUSSELL
			D. GREER
			4-21-14 [18]

2. 14-22102-D-13 SAUL/ADRIANA GARCIA RDG-2

OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS 5-2-14 [22]

Final ruling:

This is the trustee's objection to the debtors' claim of exemptions. On May 2, 2014, the debtors filed an amended Schedule C. As a result of the filing of the amended Schedule C, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

3. 14-20104-D-13 LEI/JAMES BAIDOO KFR-1

MOTION TO CONFIRM PLAN 4-21-14 [50]

Final ruling:

This case was dismissed on May 2, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

4. JCK-4 LIEN

14-20409-D-13 MICHAEL NGUYEN AND LISA MOTION TO VALUE COLLATERAL OF BANK OF AMERICA 5-1-14 [50]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Bank of America at \$0.00, pursuant to \$ 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

PGM-1

14-22411-D-13 KENNETH SERRANO

MOTION TO VALUE COLLATERAL OF UMPQUA BANK 5-1-14 [15]

6. 14-21112-D-13 SALVADOR ROJAS SAC-3

MOTION TO CONFIRM PLAN 4-29-14 [62]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

7. 13-28714-D-13 JOHN/CONNIE PERRY TCB-5

MOTION TO MODIFY PLAN 4-29-14 [54]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

8. 14-21815-D-13 JARNAIL KANG CLH-4 MOTION TO CONFIRM PLAN 4-16-14 [39]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party failed to serve the creditor added to the debtor's Schedule F by amendment filed April 16, 2014, as required by Fed. R. Bankr. P. 2002(b), and failed to give notice of the amendment to the creditor, as required by Fed. R. Bankr. P. 1009(a); (2) the plan lists the total of general unsecured claims at \$1,419,271, which is much higher than the total disclosed by the schedules or by the claims on file, and the motion fails to explain the discrepancy; and (3) the plan fails to provide for the secured claims of Unifund CCR, LLC, and CACH, LLC, listed on the debtor's Schedule D. The debtor suggests in a reply to the trustee's opposition that those two claims are "provided for" because the court has issued orders avoiding the liens. That does not mean the claims need not be listed in the plan - such claims are required to be listed in section C of Class 2, whereas in this case, the debtor has listed "None" in that section. It is arguable, therefore, that the language of section 2.09(d), which provides that each Class 2 creditor shall retain its lien until completion of the plan, would not apply in this case to Unifund CCR, LLC and CACH, LLC, because their claims are not listed.

For the reasons stated, the motion will be denied, and the court need not reach the other issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

9. 14-22215-D-13 PAMELA MATHIS MSM-1

MOTION TO VALUE COLLATERAL OF U.S. BANK 5-13-14 [35]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

11. 14-21118-D-13 CATHERINE GRIFFIN

AMENDED MOTION TO CONFIRM PLAN 4-24-14 [39]

HWW-2

Final ruling:

This case was dismissed on May 29, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

HWW-3

12. 14-21118-D-13 CATHERINE GRIFFIN MOTION TO VALUE COLLATERAL OF SPRINGLEAF FUNDING TRUST 2013-B SPRINGLEAF FINANCIAL SERVICES,

INC.

5-13-14 [50]

Final ruling:

This case was dismissed on May 29, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

13. 14-21118-D-13 CATHERINE GRIFFIN

HWW-4

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES,

INC.

5-13-14 [54]

Final ruling:

This case was dismissed on May 29, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

14. 14-23424-D-13 CARL JUBB RCO-1

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 4-29-14 [25]

15. 11-31226-D-13 DAMON/EVA MCHENRY CJY-1

OBJECTION TO CLAIM OF CITIBANK, N.A., CLAIM NUMBER 17 4-14-14 [65]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the debtors' objection to claim only as to the arrearage portion of Citibank's claim and as to the additional attorney's fees and costs referred to in footnote 2 of the proof of claim breakdown sheet. Moving party is to submit an appropriate order. No appearance is necessary.

16. 13-34530-D-13 DANA BUCKINGHAM RDG-4

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 5-2-14 [71]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to the debtor's claim of exemptions. Moving party is to submit an appropriate order. No appearance is necessary.

17. 13-34930-D-13 TINA AYERS LTF-2

MOTION TO CONFIRM PLAN 4-21-14 [44]

18. 09-34399-D-13 JULIO/SYLVIA HERRERA MOTION TO MODIFY PLAN MLP-2 5-6-14 [37]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

19. 12-27134-D-13 SCOTT/ALLISON SMEDLEY MOTION TO MODIFY PLAN TBK-8 5-2-14 [91]

20. 11-29435-D-13 ALPHA WARREN MOTION TO MODIFY PLAN CLH-2 5-6-14 [58]

21. 11-36935-D-13 RAMIRO/KIMBERLY BARRAGAN MOTION TO APPROVE LOAN CLH-2 MODIFICATION 5-13-14 [51]

Final ruling:

This is the debtors' motion to approve a mortgage loan modification. No party-in-interest has filed opposition to the motion. However, the court is not prepared to grant the motion at this time, as it was not served on any of the creditors in this case except the mortgage lender and one other secured creditor, although the modification will affect the debtors' budget, and thus, may affect the rights of creditors. The court will continue the hearing to June 24, 2014, at 10:00 a.m., the

moving parties to file a notice of continued hearing, which shall be a notice pursuant to LBR 9014-1(f)(2) (no written opposition required), and to serve it on all creditors no later than June 10, 2014. The moving parties shall file a proof of service no later than June 13, 2014. The original notice of hearing provided sufficient information to satisfy the requirement of LBR 9014-1(d)(4) (for service of the notice of hearing only); if the notice of continued hearing contains the same information, the debtors need not also serve the motion or supporting documents.

The hearing will be continued by minute order. No appearance is necessary on June 10, 2014.

22. 14-21937-D-13 GEORGE/KIMBLYN BEGONIA BSH-4

MOTION TO VALUE COLLATERAL OF GECCCC 5-2-14 [40]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of GECCCC at \$0.00, pursuant to \$506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of GECCCC's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

23. 14-21937-D-13 GEORGE/KIMBLYN BEGONIA BSH-5

MOTION TO VALUE COLLATERAL OF PORTFOLIO RECOVERY, LLC 5-2-14 [45]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Portfolio Recovery, LLC at \$0.00, pursuant to \$506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Portfolio Recovery, LLC's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

24. 14-21843-D-13 JAVIER/SYLVIA MANZO RDG-2

OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS 5-2-14 [32]

Final ruling:

This case was dismissed on May 5, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

25. 14-23451-D-13 ERNESTO/MARIA ORTEGA TOG-1

MOTION TO VALUE COLLATERAL OF SPECIALIZED LOAN SERVICING, LLC 5-13-14 [17]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Specialized Loan Servicing, LLC at \$0.00, pursuant to \$506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Specialized Loan Servicing, LLC's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

26. 13-35356-D-13 ESTHER/MAURILIO GOMEZ MOTION TO CONFIRM PLAN JM-3 4-14-14 [63]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The trustee has filed opposition on the ground that the plan provides for the claim of Nationstar Mortgage in Class 2, and proposes to pay the value of the collateral securing that claim, whereas the court has not entered an order valuing that collateral. The debtors' motion to value the collateral of Nationstar Mortgage is set for hearing on July 8, 2014, at 10:00 a.m. The court will continue the hearing on this motion to confirm amended plan to the same date and time. The hearing will be continued by minute order. No appearance is necessary on June 10, 2014.

27. 13-24557-D-13 ZENAIDA HERRERA MOTION TO MODIFY PLAN HWW-6 5-3-14 [70]

28. 12-31560-D-13 ARMANDO/LINDA MARTINEZ MOTION TO MODIFY PLAN DMR-2 4-24-14 [44]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

29. 12-32362-D-13 PASCUAL/NANCY CALUYA JCK-6

OBJECTION TO CLAIM OF WELLS FARGO BANK, N.A., CLAIM NUMBER 13 4-25-14 [71]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the debtors' objection to claim and disallow any amount over \$3,164. Moving party is to submit an appropriate order. No appearance is necessary.

30. 13-35763-D-13 DANIEL CHAN SJS-1

MOTION TO AVOID LIEN OF ASSET ACCEPTANCE, LLC 5-9-14 [32]

Final ruling:

This is the debtor's motion to value collateral of Asset Acceptance, LLC (the "creditor"). The motion will be denied because the moving party failed to serve the creditor in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served the creditor (1) to the attention of the "Bankruptcy Dept."; (2) to the attention of an individual named Mr. Rion B. Needs; (3) through the attorney who obtained the creditor's abstract of judgment; and (4) to the attention of an agent for service of process of the creditor, but at an address that is not the address of the creditor's registered agent for service of process. The first method was insufficient because service on a corporation, partnership, or other unincorporated association must be addressed to the attention of an officer, managing or general agent, or agent for service of process. There is no provision in the rule for service on a "Bankruptcy Dept." The second method was insufficient because service must be addressed to the attention of an officer, managing or general agent, or agent for service of process, whereas here, there is no evidence in the record that Mr. Rion B. Needs occupies any of those roles.

The third method was insufficient because there is no evidence the attorney who obtained the creditor's abstract of judgment is authorized to accept service of process on the creditor's behalf in bankruptcy adversary proceedings and contested matters pursuant to Fed. R. Bankr. P. 7004(h). See Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 93 (9th Cir. BAP 2004). The fourth method was insufficient because if service is to be made to the attention of an agent for service of process, it must be an agent authorized by appointment or by law to receive service (Rule 7004(b)(3)), whereas here, the moving party utilized the address of The Prentice-Hall Corporation System, Inc., which is the agent for service of process of Corporation Service Company, which in turn, is the agent for service of process of the creditor. In other words, the moving party did not serve the creditor's agent for service of process:

As a result of these service defects, the motion will be denied by minute order. No appearance is necessary.

31. 13-34967-D-13 ERNESTO/MARIA ESTRADA TOG-3

MOTION TO VALUE COLLATERAL OF U.S. BANK, N.A. 5-13-14 [78]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of U.S. Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of U.S. Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

32. 11-34668-D-13 WILLIAM/ANNA BENSMAN JDP-1

MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE 5-7-14 [44]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of JP Morgan Chase at \$0.00, pursuant to \$ 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of JP Morgan Chase's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

PD-1

33. 10-34573-D-13 JAY/ROSEMARY RODACKER

MOTION TO APPROVE LOAN MODIFICATION 4-25-14 [31]

Final ruling:

This is the motion of Nationstar Mortgage LLC ("Nationstar") for an order providing consent for the debtors and Nationstar to enter into a loan modification agreement. The trustee has filed opposition. The motion will be denied for the following reasons.1

First, the motion is premature. In the prayer to the motion, Nationstar requests that the debtors and Nationstar be authorized to enter into a loan modification agreement, with Nationstar retaining the right of final approval of the terms of the agreement, and retaining the right to reinstate its claim in the event the loan modification is not finalized. This suggests Nationstar may, if the motion is granted, modify the terms of the loan modification without further court approval, a procedure the court will not approve. Second, the court also will not approve Nationstar's request that any Notice of Mortgage Payment Change filed by Nationstar to reflect a change in the debtors' mortgage payment as a result of the loan modification shall be deemed timely filed for purposes of Fed. R. Bankr. P. 3002.1(b). The rule requires that a Notice of Mortgage Payment Change be filed and served no later than 21 days before a payment in the new amount is due. Nationstar

has provided no authority for its requested relief from the rule.

Third, the motion is not supported by evidence sufficient to demonstrate that Nationstar is entitled to the relief requested, as required by LBR 9014-1(d)(6). In support of the motion, Nationstar has submitted unauthenticated copies of a purported loan modification agreement, note, and deed of trust. As the trustee rightly points out, the proposed loan modification agreement would save the debtors \$635 per month on their mortgage payment, whereas they have not filed amended Schedules I and J; thus, the trustee and the court are unable to determine the impact of the modification on the debtors' plan. Finally, as the trustee also points out, the debtors have not joined in the motion.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

34. 11-29774-D-13 PATRICIA DEMELLO JDP-1

MOTION TO VALUE COLLATERAL OF ADDISON AVENUE FEDERAL CREDIT UNION 5-6-14 [35]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Addison Avenue Federal Credit Union at \$0.00, pursuant to \$506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Addison Avenue Federal Credit Union's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

35. 13-30483-D-13 GARY/SHARON SPARKS HCS-3

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM, CRABTREE, SUNTAG FOR LORIS L. BAKKEN, TRUSTEE'S ATTORNEY(S)
5-13-14 [161]

¹ The trustee opposed the motion on the ground, among others, that Nationstar had failed to serve all (actually, any) of the debtors' creditors. After the trustee's opposition was filed, Nationstar remedied this service defect by serving the moving papers on all creditors on May 12, 2014.

Final ruling:

TOG-4

This is the debtors' motion to confirm a chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties failed to serve the creditor filing Claim Nos. 6 and 10 at the address on its proofs of claim, as required by Fed. R. Bankr. P. 2002(g)(1); and (2) the moving parties failed to serve Target, which has not filed a proof of claim in this case, at its address on the debtors' Schedule F or at all, as required by Fed. R. Bankr. P. 2002(b) and (q)(2).

As a result of these service defects, the motion will be denied, and the court need not reach the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

37. 13-27384-D-13 JOSEPHINE ARENAS-FIERRO MOTION TO CONFIRM PLAN 4-10-14 [82] RCP-6

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

MOTION TO CONFIRM PLAN 38. 14-21386-D-13 ROSIA/LINDA EALY JDP-1 4-22-14 [25] Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

39. 14-21387-D-13 ROSE MARIE BETTENCOURT MOTION TO VALUE COLLATERAL OF JDP-5 BANK OF AMERICA, N.A. 5-6-14 [45]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Bank of America, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

40. 14-21387-D-13 ROSE MARIE BETTENCOURT MOTION TO VALUE COLLATERAL OF JDP-6

BANK OF AMERICA, N.A. 5-6-14 [49]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Bank of America, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

41. 14-21387-D-13 ROSE MARIE BETTENCOURT MOTION TO VALUE COLLATERAL OF JDP-7

BANK OF AMERICA, N.A. 5-6-14 [53]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Bank of America, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

42. 14-21387-D-13 ROSE MARIE BETTENCOURT JDP-8

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 5-6-14 [57]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Bank of America, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

RDG-2

43. 14-23201-D-13 FRANCISCO/CHARMINE DELA VEGA

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 5-19-14 [18]

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 5-19-14 [20]

Final ruling:

This case was dismissed on May 29, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

45. 14-25017-D-13 JAMES VAUGHN TRN-1

MOTION TO IMPOSE AUTOMATIC STAY 5-19-14 [15]

Tentative ruling:

This is the debtor's motion to impose the automatic stay, pursuant to § 362(c)(4)(B) of the Bankruptcy Code. As discussed below, the court intends to deny the motion. However, even if the court were to grant the motion, the order imposing the stay would not apply to three of the debtor's creditors, for the following reason. The debtor did not file his schedules at the time he filed his master address list, and when he did file the schedules, he added new creditors - creditors who were not listed on the master address list, and he failed to amend the master address list to include those creditors. As a result, the following creditors, listed on the debtor's Schedules D, E, and F, respectively, were not noticed of this motion: San Joaquin County Prop. Tax; Tanya L. Vaughn; and Anthony Drew Howe, as attorney for REO A&D, LLC. (The debtor did not list REO A&D, LLC separately from its attorney; thus, REO A&D, LLC was not noticed, and would not be bound by any order granting this motion.) Thus, to the extent, if any, the court imposes the stay, the order will not apply to those creditors.

Turning to the merits of the motion, § 362(c)(4)(B) provides that if, within 30 days after the filing of the case, a party in interest requests, the court may order the stay to take effect, after notice and a hearing, "only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed" A case is presumptively not filed in good faith if the debtor was a debtor in two or more prior cases pending within the year preceding the filing of the present case. § 362(c)(4)(D)(i)(I). The debtor has been a debtor in two such cases, Case Nos. 13-30649 and 14-23135; thus, the presumption arises in this case.

The presumption may be rebutted by clear and convincing evidence that this case was filed in good faith. § 362(c)(4)(D). The debtor's motion is supported by his declaration, in which he indicates that the National Law Consumer Law Group (the "Group") was to blame for the dismissal of his two prior cases. He paid the Group a \$3,500 retainer to file a bankruptcy case in order to save his house from foreclosure. However, unbeknownst to the debtor, the Group filed the petitions in both cases with the debtor in pro se. The debtor says he did not know what pro se meant at the time, and did not know he needed to provide further information after the cases were commenced. (Both had been filed by way of skeletal petitions.) Thus, both cases were dismissed. The debtor states: "I was just told by Mr. Sandoval and Mr. Menton, paralegals at the Group, to sign the documents and the Group would take care of everything." Debtor's Declaration, filed May 19, 2014, at 2:5-6. Thus, "[d]ue to this horrible experience, the very thing that I had hoped

filing bankruptcy would prevent happened-my home was foreclosed." Id. at 2:6-8.

The court takes judicial notice of the record in the debtor's two prior cases. In the first, on August 17, 2013, the debtor was served with a Notice of Incomplete Filing and Notice of Intent to Dismiss Case if Documents Are Not Timely Filed, by which he was advised that if a chapter 13 plan, means test, Schedules A through J, summaries, and Statement of Financial Affairs were not filed by August 27, 2013, and if a motion for an extension of time or a notice of hearing had not been filed by that date, the case would be dismissed without further notice. The warnings on that document were given in bold and underlined type. Yet by September 3, 2013, none of the required documents had been filed, and the case was dismissed. The debtor makes no reference in his declaration to the notice — in particular, he does not indicate why he, apparently, took no action in response to it. On September 5, 2013, the debtor was served with a notice advising him that the case had been dismissed for failure to timely file the documents.

The debtor did not file his second case right away — he waited almost seven months. In the meantime, on October 15, 2013, 20 days after the debtor's first case was dismissed, the foreclosure sale of the debtor's residence took place; REO A&D LLC purchased the property.¹ REO has submitted testimony to the effect that it commenced an unlawful detainer action on November 1, 2013, that the debtor has remained in possession of the property, that REO obtained a judgment of possession following a trial, and that the debtor has not paid REO any consideration for his use of the property since the foreclosure date. The debtor filed his second bankruptcy case on March 28, 2014, over five months after the foreclosure sale occurred, over four months after REO filed its unlawful detainer action, and, apparently, after the judgment of possession was entered. The debtor's present motion states that he filed the second case to stop the eviction.

The debtor blames the Group for the dismissal of the second case as well, claiming he was again not aware it filed the petition as a pro se petition. Although schedules and statements were filed in the case, the debtor claims he was never told he needed to provide further information; thus, the debtor states that "the Group filed documents on [his] behalf that were incomplete or incomprehensible." Decl. at 2:3-4. It does appear the schedules and statements filed in the second case were incomplete. They were also, however, seriously inaccurate. For example, the Schedule A filed in that case listed the value of the debtor's residence as \$348,000 with liens against it totaling \$338,000; in the present case, the value is listed at \$466,000, with liens of \$412,000. The debtor signed the schedules in both cases under penalty of perjury; he offers no explanation as to why he signed such inconsistent statements, both under oath. does not suggest where the Group got the figures listed in the second case, if not from the debtor. There are other inconsistencies in the Schedules B in the two cases. A "personal vehicle" was valued in the second case at \$2,500; in this third case, the debtor listed a 2006 Infiniti M35, which he values at \$7,600. Again, where did the Group get the \$2,500 figure if not from the debtor? Further, why did the debtor sign under oath a schedule containing that figure if it was not accurate? The Schedule B in the second case also omitted the following assets that are listed in this third case: \$1,500 worth of jewelry, a \$100 shotgun, a term life insurance policy, and \$5,000 in a 457 plan. The required places on the Schedule B were not simply left blank - the "none" box was checked for each of those categories.2 Again, the debtor either signed schedules under oath knowing they were not accurate or he signed the declaration verifying the schedules without reading them.

As in the first case, the debtor was warned the second case would be dismissed

if further action were not taken, yet he did nothing. On April 15, 2014, the trustee served the debtor with a notice, declaration, and motion to dismiss the case for failure to provide a Class 1 Checklist and for failure to file a comprehensible plan - the motion noted that the plan gave the plan length as "0" months, and failed to provide for any creditors.3 The debtor, so far as the record reveals, took no action prior to the hearing, and he failed to appear at the hearing on April 29, 2014, at which time the case was dismissed. (The debtor was also served, on April 3, 2014, with a motion for relief from stay filed by REO A&D, LLC; according to the record, the debtor took no action in response to that motion either.)

Twelve days after the second case was dismissed, the debtor filed this third case. He states that he has "retained competent counsel and [is] committed to not only pursue this filing in good faith, but ha[s] also filed [a state court action] to undo the foreclosure." Decl. at 9-11. He offers no basis on which the foreclosure might be undone. In his schedules filed in this case, he lists himself as the owner of the property, and REO, through its attorney, as a general unsecured creditor with a \$0 claim. His plan provides for Chase, which according to his Schedule D holds a second position deed of trust, to be paid \$132 per month directly by the debtor; the plan does not provide for REO or for Bank of America, listed on the debtor's Schedule D as holding a first deed of trust securing a claim for \$351,000, at all.

The court concludes that the debtor has failed to demonstrate by clear and convincing evidence that this case has been filed in good faith. The court does not condone the actions of the Group in taking the debtor's retainer and failing to represent him; however, the debtor's role in the conduct that led to the dismissal of the two prior cases was far from blameless. His signing under oath of schedules that were obviously incomplete and thus inaccurate supports the court's conclusion. Finally, it is clear that the purpose of this chapter 13 case is to delay the debtor's eviction from his residence while the debtor pursues what, at least from what the record reveals, is a baseless action to undo the foreclosure. The court notes the debtor has suggested no reason why he has not sought injunctive relief to stop the eviction in his state court action; the court can only assume it is because he does not believe he would be successful. Bankruptcy is not intended to be a convenient substitute in such situations. The debtor's failure to provide in his plan for the first position deed of trust in the unlikely event he is successful in unwinding the foreclosure is further support for the court's conclusion that this case was not filed in good faith.

The court will hear the matter.

¹ The court takes judicial notice of the copy of the recorded trustee's deed filed as an exhibit to REO's motion for relief from stay, set for hearing on June 24, 2014.

The debtor's Schedule F in the second case listed only one creditor - REO A&D, LLC, the purchaser of the debtor's residence at the foreclosure sale. This third case lists credit card debts totaling \$26,596 and a \$9,521 student loan. Similarly, the Schedules I and J in the second case contained zeroes on every line, whereas according to the schedules in this case, the debtor has been employed as a school administrator for the Stanislaus County Department of Education for nine months. Again, the debtor signed both sets of schedules under oath; he should not have needed to be told the schedules in the second case were incomplete - he must have known that.

The plan bears the debtor's signature, clearly states that the plan term was to be "0" months, and estimates general unsecured claims at "\$0.00," whereas, according to the schedules in this new case, the debtor owes \$36,117.

46. 14-23019-D-13 LARRY/CHRISTINE BROOKS OBJECTION TO CONFIRMATION OF RDG-1

PLAN BY RUSSELL D. GREER 5-19-14 [18]

47. 14-25132-D-13 KAREN CLEARY

MOTION TO EXTEND AUTOMATIC STAY 5-20-14 [9]

Tentative ruling:

This is the debtor's motion to extend the automatic stay, pursuant to § 362(c)(3)(B) of the Bankruptcy Code. The "attached list" referred to in the proof of service; that is, the list of persons and entities on whom the motion was served, is not attached to the proof of service. If a corrected proof of service has not been filed by the time of the hearing, the motion will be denied.

The court will hear the matter.

48. RDG-3

14-23133-D-7 KEITH/ADRIALYN HEDMAN OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 5-19-14 [19]

Final ruling:

This case was converted to a case under Chapter 7 on May 21, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

49. 14-22773-D-13 ROLANDO/MICHELLE LOZANO RDG-1

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 5-22-14 [25]

	THE BANK OF NEW TRUST COMPANY,		AUTOMATIC STAY 5-22-14 [14]
51.	14-23176-D-13 RDG-1	JANE PRATT	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 5-19-14 [15]
52.	13-26478-D-13 RDG-2	ALFONSO RODRIGUEZ	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 5-19-14 [121]
53.	13-29483-D-13 JAD-1	SHENIDA ARNICK	MOTION TO INCUR DEBT 5-20-14 [34]

50. 14-24774-D-13 BRIGIDA PALARUAN MOTION FOR RELIEF FROM